IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO.1125 OF 2004
IN
APPEAL FROM ORDER NO.724 OF 1985

Suryakant Bhagwanji Jobanputra ... Applicant

V/s.

Anil Bhagwanji Jobanputra ... Respondent

Applicant present in person
Respondent present in person

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **DECEMBER 7, 2004**

P.C.:

. The Present Civil Application seeks a clarification of certain orders of this Court in view of the observations made by the trial Court on 30.7.2004 in its order. The trial Court had by an earlier order of same date had directed the Court Receiver to refund an amount of Rs.3,085/- to the plaintiff (the respondent herein) on the plaintiff's executing a bond giving security for the said amount. It appears that the defendant i.e., the applicant herein had deposited this amount with the Court Receiver as per the directions contained in the earlier order of this Court. The applicant now contends that the plaintiff should not be permitted to withdraw this money from the Court Receiver and therefore seeks a clarification as directed by the

trial Court in its order dated 30.7.2004.

2. By an order of 15.1.1998, this Court while dealing with the Appeal from Order No.724 of 1985 directed the Court Receiver to accept the rent due from the applicant herein. The plaintiff was directed to pay the rent to the landlord and not to the Court Receiver and receipts were to be deposited with the Receiver. It appears that thereafter on 25.8.1999, Civil Application No.3447 of 1999 was moved by the original plaintiff. This Court (Baam, J.) passed an order directing the Court Receiver's representative to issue notice to the respondent, that is the applicant in the present Civil Application, to pay his share of the rent. The plaintiff was also directed to clear his share of the rent and to submit receipts to the Court Receiver by an order of 1.11.2001. An application was moved before Khanwilkar, J. for modification of the order dated 15.1.1998. After considering the order passed by Baam, J. on 25.8.1999, the learned Judge was of the view that it would be open to the trial Court to pass such appropriate orders that would be necessary as against the respondent, that is the applicant herein for having failed to comply with the requirements to pay his share. of the rent. The Civil Application was thus disposed of. It appears that the learned trial Court was moved regarding the maintainability of the suit. The

preliminary issue was to be argued on 3.7.2004. The Court Receiver was directed by the trial Court to refund the sum of Rs.3,085/- to the plaintiff on the plaintiff's executing a bond giving security of the amount. This was because the trial Court held that the plaintiff was entitled to receive 50% of the amount already deposited by the applicant with the Court Receiver since he had paid the entire rent, including the share of the applicant to the landlord, who had passed rent receipts for the same. After passing this order, on the same day, the trial Court observed that if any clarifications are to be sought, the parties would be at liberty to move this Court and the earlier order of the same date directing the plaintiff to execute a bond by giving security on the same amount of Rs.3085/- was set aside.

3. There is no need to clarify any of the earlier orders. Neither the order of 15.1.1998 directing that the plaintiffs should pay the rent directly to the landlord and the applicant to deposit the amount with the Court Receiver has been challenged nor the subsequent order of Baam, J. of 25.8.1999 has been challenged. In view of this, there is no need to pass any clarificatory orders. The observations made by Khanwilkar, J. are very clear that it is for the trial Court to pass appropriate orders on the application

preferred by the plaintiff. Therefore, there is no need to pass any clarificatory order. The present Application cannot be granted at this stage when the earlier orders of this Court would be required to be modified which is not the scope of my jurisdiction. If the applicant is aggrieved by the earlier orders of this Court, he may seek relief in appropriate proceedings.

4. In the circumstances, Civil Application is dismissed.